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Attorneys for Plaintiffs, ELECTRONIC RECYCLERS INTERNATIONAL INC., and
ELECTRONIC RECYCLERS OF AMERICA LLC, and Counterdefendant, ELECTRONIC
RECYCLERS INTERNATIONAL INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

ELECTRONIC RECYCLERS
INTERNATIONAL INC., a Delaware
Corporation, and ELECTRONIC
RECYCLERS OF AMERICA LLC, a
California Limited Liability Company,

Plaintiffs,

v.

DLUBAK GLASS COMPANY, INC., a
Pennsylvania Corporation, DAVID A.
DLUBAK, an individual, and DOES 1
through 25, inclusive,

Defendants.

DLUBAK GLASS COMPANY, INC.,
a Pennsylvania Corporation,

Counterclaimant,

v.

ELECTRONIC RECYCLERS
INTERNATIONAL INC., a Delaware
Corporation,

Counterdefendant.

Case No. 3:11-mc-80116-JSW (NJV)

**STIPULATION AND ~~[PROPOSED]~~
ORDER RE: VACATE MOTION TO
COMPEL RESPONSE FROM NON-
PARTY TO SUBPOENA FOR RECORDS;
AND DISMISSAL OF ACTION**

**STIPULATION AND ~~[PROPOSED]~~ ORDER RE: VACATE MOTION TO COMPEL RESPONSE FROM
NON-PARTY TO SUBPOENA FOR RECORDS; AND DISMISSAL OF ACTION**

STIPULATION

Plaintiffs/Counterdefendants, ELECTRONIC RECYCLERS INTERNATIONAL, INC. and Plaintiff ELECTRONIC RECYCLERS OF AMERICA, LLC (hereinafter, collectively, "ERI") and Defendants/Counterclaimants DLUBAK GLASS COMPANY, INC. and Defendant DAVID A. DLUBAK (hereinafter, collectively, "Dlubak") by and through their counsel of record, hereby recite, stipulate and agree as follows:

1. In light of the settlement of the underlying action in the Eastern District of California (Case No. 1:10-CV-0760-LJO-GSA), the parties hereto stipulate to: (1) vacate ERI's Motion to Compel Responses from Non-Party to Subpoena for Records currently set for August 30, 2011 at 11:30 in Courtroom 11; and (2) to the extent necessary, dismiss this action (Case No. 3:11-mc-80116-JSW (NJV)), which consisted in its entirety of the Motion to Compel Responses from Non-Party to Subpoena for Records, without prejudice with each side agrees to bear its own fees and costs.

SO STIPULATED.

Dated: August 22, 2011

DOWLING, AARON & KEELER, INC.

By: /s/ G. Andrew Slater
KEITH M. WHITE
G. ANDREW SLATER
Attorneys for Plaintiffs, ELECTRONIC RECYCLERS INTERNATIONAL INC., and ELECTRONIC RECYCLERS OF AMERICA LLC, and Counterdefendant ELECTRONIC RECYCLERS INTERNATIONAL INC.

Dated: August 22, 2011

McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP

By: /s/ Mandy L. Jeffcoach
TIMOTHY J. BUCHANAN
MANDY L. JEFFCOACH
Attorneys for Defendants DLUBAK GLASS COMPANY, INC., a Pennsylvania Corporation, DAVID A. DLUBAK,



ORDER

The Court, having reviewed the above stipulation and finding good cause to support it, hereby enters the stipulation as an ORDER OF THE COURT and: ~~(1) vacates ERI's Motion to Compel Responses from Non-Party to Subpoena for Records currently set for August 30, 2011 at 11:30 in Courtroom 11; and (2) dismisses Case No. 3:11-mc-80116-JSW (NJV) without prejudice.~~

Dated: August 23, 2011



Honorable Nandor J. Vadas
United States Magistrate Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) **SS**
COUNTY OF FRESNO)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen (18) years and not a party to the within-entitled action. My business address is Dowling, Aaron & Keeler, Inc., 8080 N. Palm Avenue, Third Floor, Fresno, California, 93711. On August 22, 2011, I served the within document(s):

STIPULATION AND [PROPOSED] ORDER RE: VACATE MOTION TO COMPEL RESPONSE FROM NON-PARTY TO SUBPOENA FOR RECORDS; AND DISMISSAL OF ACTION

- ☐ **BY FAX:** By transmitting via facsimile transmission the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ **BY MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as set forth below.
- ☐ **BY OVERNIGHT COURIER:** By causing the document(s) listed above to be picked up by an overnight courier service company for delivery to the address(es) listed below on the next business day.

James E. Kemp, Esq.
 Law Office of James E. Kemp
 530 Lytton Avenue, 2nd Floor
 Palo Alto, California 94301

ECS Refining Texas, LLC
 Kenneth R. Taggart, Agent for Service of
 Process
 705 Reed Street
 Santa Clara, CA 95050

Attorney for ECS Refining Texas, LLC.

I am readily familiar with the firm's practices of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 22, 2011, at Fresno, California.

/s/ Nellie M. Jacques
 Nellie M. Jacques

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